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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

PRESERVE OUR VALLEY, et al., H029243

Plaintiffs and Appellants, (Monterey County Superior Court No. M69929)

v.

COUNTY OF MONTEREY,

Defendant and Respondent;

GRANITE CONSTRUCTION COMPANY,

Real Party in Interest and Respondent.
_____/

The Handley Ranch Quarry Project (Project) will establish a granite quarry in the Gabilan Mountains. Appellants Preserve Our Valley and The Open Monterey Project unsuccessfully sought a writ of mandate to compel respondents County of Monterey and Board of Supervisors of the County of Monterey (County) to set aside the certification of a Final Environmental Impact Report (FEIR) and the approval of the Project. The Project would be developed by real parties in interest Granite Construction Company and Granite Construction, Inc. (Granite). On appeal, appellants contend that the EIR grossly miscalculated the amount of waste materials to be generated by the Project and failed to sufficiently

analyze the impacts of the Project on air quality, water use, and traffic. Appellants further assert that the EIR's discussion of alternative projects is inadequate, that the County failed to impose a feasible air pollution mitigation, and that the Project is not permitted under the zoning ordinance. We conclude that the EIR failed to adequately analyze the impacts of the Project on water use and reverse.

I. Statement of Facts

Granite proposes to develop a granite quarry and associated facilities at the Project site. The facilities would include an administration complex, a rock processing plant, an asphaltic concrete batch plant, a Portland cement concrete batch plant, and an asphalt and concrete recycling facility. The mining operation is designed to provide a new source of aggregates, which include sand, gravel, and crushed stone. Aggregates are used to make concrete for building and maintaining public and private infrastructure. The proposed maximum production of aggregates would be 1.5 million tons per year.

The Project would be located in the Gabilan Mountains approximately four miles north of the City of Gonzales and 13 miles southeast of the City of Salinas. It would occupy 333 acres of the 1,230-acre Handley Ranch. There would be 224 acres of actual quarry area, 28 acres of plant site area, six acres of road, and 75 acres of overburden stockpile area.

Quarry excavation operations would occur in four phases over 113 years, and would be followed by seven years of site reclamation. Reclamation would occur pursuant to the Handley Ranch Quarry Reclamation Plan (Reclamation Plan). In addition to seven years of post-mining reclamation, reclamation would also occur concurrently with mining activities. Reclamation activities would include removal of the processing and administrative facilities, reduction of the slopes, replacement of overburden (the soil that must be removed to reach the rock deposit) and topsoil, and replanting. Final reclamation of the site would result in

open space for cattle grazing and other agricultural uses as well as an 80-acre surface water storage reservoir.

II. Statement of the Case

In May 2003, the County completed the Draft EIR (DEIR) and circulated it for comments. In October 2003, the County issued the FEIR, which included responses to comments that were received during the public comment period. In November 2003, the Planning Commission certified the FEIR and approved the Project. After hearing appellants' challenge to the EIR, the Board of Supervisors (Board) certified the FEIR and approved the Project on April 20, 2003. This approval incorporated 112 conditions, including review of the reclamation process every five years and review of the Project's activities at 10-year intervals. In May 2004, appellants filed a petition for writ of mandate, which the trial court denied.

III. Discussion

A. Adequacy of the EIR

1. Standard of Review

We have previously stated the appropriate standard of review in cases involving the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). "In a mandate proceeding to review an agency's decision for compliance with CEQA, the scope and standard of our review are the same as the trial court's, and the lower court's findings are not binding on us. We review the administrative record to determine whether the agency prejudicially abused its discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence. Substantial evidence is defined in the CEQA Guidelines as enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made . . . is to

be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative [or] evidence which is clearly erroneous or inaccurate . . . does not constitute substantial evidence. The agency is the finder of fact and we must indulge all reasonable inferences from the evidence that would support the agency's determinations and resolve all conflicts in the evidence in favor of the agency's decision. In reviewing an agency's decision to certify an EIR, we presume the correctness of the decision. The project opponents thus bear the burden of proving the EIR is legally inadequate." (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 116-117 (*Save Our Peninsula*), internal quotations and citations omitted.)

2. Waste Calculations[1]

Appellants contend that the EIR miscalculated the amount of waste that would be generated by the Project. They claim that 210, not 75, acres would be needed for storage piles.

Appellants focus on DEIR Table 2.0-2, which outlined the data for the Reclamation Plan. Table 2.0-2 stated that there would be 100,000 tons of unmarketable material every year for the Project. Appellants have calculated that this figure is equivalent to 6.25 percent waste (7.53 million cubic yards total over 113 years), and thus falls within state and national averages for mining waste, that is, 5 to 20 percent of total production. Based on this estimate, appellants claim that the Project would generate 210 acres of waste. Appellants next assert that DEIR Table 2.0-3 incorrectly stated that there would 2.67 million cubic yards of waste generated over the life of the Project, which is equivalent to 2.3 percent

[1] We will use "waste" as the collective term for overburden and waste fines (the material that is a byproduct of aggregate processing operations).

waste. Based on this lower estimate, the DEIR concluded that only 75 acres would be needed for waste storage.

On June 25, 2003, appellants submitted comments on the DEIR, pointing out that the figures in the DEIR were inconsistent, and that the gross underestimation of the amount of waste affected the analysis of the Project's environmental impacts. Appellants also requested that respondents investigate this issue further rather than rely on Granite's figures as to the amount of waste.

In response to these comments, the FEIR stated that Granite had reviewed its data and reaffirmed that the Project would require 75 acres of stockpile areas. The response further explained that Granite estimated waste fines and storm water runoff would be 800,000 cubic yards and overburden would be 1.8 million cubic yards for a total of 2.6 million cubic yards of waste, and that these estimates were based on geologic data specific to the Project site as well as data from similar sites. The response next noted that the Reclamation Plan required large quantities of overburden and fines to restore slopes, and that some of the overburden could be marketed. The response also pointed out that the County had entered into contracts with engineers and geologists at Golder Associates and hydrologists at EMKO Environmental, who had reviewed the Project's Operations and Reclamation Plans and supporting technical documentation on this issue. Moreover, Resource Design Technology, Inc., which prepared the DEIR and FEIR, had previously participated in over 200 recent mining projects, and thus had extensive experience in preparing mining reclamation plans and EIRs for mining operations. The response concluded that if Granite were to substantially vary its operations from the approved plans, it would be required to obtain subsequent approval of the use permit and amendments to the Reclamation Plan, which would be subject to additional environmental impact evaluation. The comments and response were incorporated into the FEIR.

After the FEIR was distributed, appellants raised the issue of waste calculations again. Referring to Granite's figure of 800,000 cubic yards of waste fines, appellants asserted that Granite had dropped its expected waste number to .6 percent. Appellants also used figures based on national averages to conclude that the stockpile requirements of the Project would far exceed those contemplated in the FEIR. Appellants then raised these issues to the Planning Commission. Granite responded by pointing out that appellants were using national averages, and reiterated that its calculations were based on testing at the Project site.

Appellants also raised the issue in their appeal to the Board. Appellants' expert, Cornerstone Engineering, asserted that there were discrepancies in the DEIR regarding waste percentages that were stated in Tables 2.0-2 and 2.0-3, and pointed out that Granite's estimate of waste was significantly lower than could be expected for this type of operation. Granite again responded that state or national averages were inapplicable, because it had conducted over 200 core drills of the site to determine the exact amount of waste, thus arriving at the figure of approximately 2.5 percent.

The EIR is "a detailed statement prepared under CEQA describing and analyzing the significant environmental effects of a project and discussing ways to mitigate or avoid the effects." (Guidelines, § 15362;[2] see also Pub. Resources Code, § 21061.) "[A]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.) "An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which

[2] All references to Guidelines are to the CEQA Guidelines, which implement the provisions of CEQA. (Cal. Code Regs., tit. 14, § 15000.)

intelligently takes account of environmental consequences. . . . The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (Guidelines, § 15151.)

Appellants rely on the discrepancy between Tables 2.0-2 and 2.0-3 as the basis for their position that the Project will generate 210 acres of waste. However, appellants have failed to acknowledge that reclamation activities would occur during all phases of the Project, and waste materials would be used for these efforts. As the County and Granite point out, the figure in Table 2.0-2 was larger than that in Table 2.0-3, because it included unmarketable materials, such as overburden and topsoil, which would be used directly for reclamation and revegetation of the site. In contrast to Table 2.0-2, the figure in Table 2.0-3 referred only to stockpiled waste, that is, overburden and waste fines, which would be stored in 75 acres.

Appellants next rely on state and national averages for mining waste to support their claim that the FEIR grossly underestimated the amount of waste. This reliance is misplaced. As the FEIR explained, the estimates of waste were based on site-specific geologic tests. Thus, state and national averages would not be controlling under these circumstances. Moreover, waste would be used as part of the reclamation process and some waste might be sold, thereby lowering the amount of waste that would be placed in stockpiles.

Noting that Granite's geologic data that served as the basis for its waste calculations and the independent peer reviews of these calculations were not included in the EIR itself, appellants assert that the EIR inadequately described the Project.

As our Supreme Court has emphasized, "[a]n EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (*Laurel*

Heights Improvement Association v. Regents of the University of California (1988) 47 Cal.3d 376, 405.) Where an EIR incorporates reports, studies, or other documents by reference, the incorporated material is considered as part of the EIR. (Guidelines, § 15150, subd. (a).)

Here the DEIR incorporated by reference several documents, including the Operations Plan and the Reclamation Plan for the Project. Both plans contained estimates of overburden by phase and discussed how overburden would be reused in the reclamation process in each phase of the Project. The geologic report outlined the methodology used to analyze the site, including analysis of test borings, review of geologic mappings conducted by Granite geologists, analysis of published and unpublished topographic, geologic, and engineering data, review of aerial photographs, and field measurements of rock discontinuities. The reclamation provisions in the Operations Plan also contained information on the amount of topsoil and overburden to be used in reclamation. Though these materials did not include all the data used to reach the conclusion that there would be 75 acres of waste materials, they provided sufficient relevant information to allow "informed decisionmaking and informed public participation." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.)

Appellants further argue that the FEIR failed as an informational document, because the County did not verify the facts regarding the waste calculations. They assert that the FEIR's statement that Granite's calculations were "peer reviewed by qualified independent third parties" did not constitute substantial evidence that the reviews analyzed the waste calculations. However, appellants overlook that

the statement was made in response to a comment challenging the waste calculations. Thus, we can infer that the peer reviews analyzed these calculations.[3]

Appellants cite *Save Our Peninsula Committee, supra*, 87 Cal.App.4th 99, 121-123, for the proposition that an EIR may not rely solely on information provided by the applicant when the information is disputed or requires objective analysis or verification. They argue that the EIR merely accepted Granite's estimates, and thus the County failed to independently investigate the amount of waste that the Project would produce.

In *Save Our Peninsula*, *supra*, 87 Cal.App.4th 99, this court considered, among other things, the methodology used to determine the figure for baseline water usage at the project site. The DEIR established the baseline based on the applicants' statement that the land had been irrigated, though there was no documentation of any irrigation and local property owners disputed the applicants' representation. (*Id.* at p. 121.) This court stated: "We have no objection to the EIR's methodology of estimating historical water use on property where no documentation is available to verify actual use. But estimating water used for irrigation where there was no substantial evidence to show that the property was in fact irrigated does not accurately reflect existing conditions." (*Ibid.*)

Here Granite conducted the geologic tests that indicated the amount of overburden on the site and thus formed the basis for the waste calculations. However, in contrast to *Save Our Peninsula*, the FEIR noted that the County hired independent third parties with technical expertise to review the Project Operations

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[3] We also note that the Department of Conservation reviewed the Reclamation Plan for compliance with the statutory requirement that the Project site would be returned to productive secondary end use and that environmental impacts would be minimized. (See Pub. Resources Code, § 2712 et seq.; *People ex rel. Dept. of Conservation v. El Dorado County* (2005) 36 Cal.4th 971.)

and Reclamation Plans and the supporting documentation. In addition, the EIR consultant had extensive experience in preparing EIRs for mining operations, and thus was also qualified to evaluate these materials. Since the estimates of waste were based not only on Granite's representations of data specific to the Project site, but also on data that was reviewed by independent third parties, there was no issue that Granite was misrepresenting the conditions of the Project site. In our view, the FEIR provided the County with sufficient information as to the amount of waste so that it could make a reasoned decision regarding the environmental consequences of the Project.[4]

Appellants also claim that the EIR consultant acknowledged that the EIR incorrectly calculated the amount of waste. We disagree.

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[4] Appellants also point out that the DEIR stated that "[t]he calculations on overburden quantities were based on conservative factors and could significantly deviate from the volumes described in this section." Thus, they argue that the use of "'conservative factors' should not permit 'significant deviations,'" and that the FEIR should have quantified any significant deviations and analyze their effects. The FEIR states: "County staff have been integrally involved in the preparation of the Draft and this Final EIR, from the identification of issues to evaluation of potential impacts to development of mitigation measures. . . . [T]his document was also prepared in consultation with other agencies and individuals with special expertise since its inception with a widely circulated Notice of Preparation. [¶] That the Applicant has been allowed to submit initial evaluations, or provide answers to inquiries, does not weaken the review process. Any data relied upon to analyze environmental impacts was subjected to independent review for methods, thoroughness, and reasonableness of conclusion. *If uncertainty existed in the impacts (whether forecasted by consultants engaged by the Applicant, or the County's consultant), it was addressed by accepted methods of conservative (environmentally-protective) assumptions, additional mitigation, and monitoring to confirm the effectiveness of mitigation*." (Emphasis added.) Thus, since the waste calculations were based on conservative or environmentally protective factors, significant deviations would not result in greater adverse environmental impacts.

At the Board hearing, Doug Garrison, the EIR consultant, stated: "On the issue of overburden, one of the factors in here that I think everybody is ignoring. There is sort of a misconception here that this material will just pile up endlessly forever and ever and just overwhelm the site. And what is ignored is that much of this material is going to be used in the reclamation of the site. This is not going to be just barren rock when they're done. They're putting this overburden, the silts from the settling ponds, all this moves back onto the site. It's used for regrading the final slopes as appropriate material for revegetation, growth medium and that's . . . With respect to Cornerstone, the expert witness in this, we do concur with him. The term overburden here is . . . it included the silts that come out of process, and they note that this could cover 210 acres. Well, the entire mining area is only 220 [*sic*] acres. The site is 330 acres. If you assume that 330 acres is going to be reclaimed, what's wrong with 220 acres of overburden[?] It's going to be put to good use. This is not an environmental calamity." We interpret these remarks, as did the trial court, that even if the numbers presented by appellants were correct, it would not result in more than 75 acres of waste materials, because this material would be used for reclamation.

3. Air Quality

a. County's Consideration of Comments by Monterey Bay Unified Air Pollution Control District (Air District)

Appellants argue that the County disregarded the Air District's comments on the Project while accepting Granite's analysis.

The Air District is responsible for air quality monitoring, enforcement, and planning. An air district is a "sister agency" to a County. (See *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 357.) "Where comments from . . . sister agencies disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these

comments may not simply be ignored. There must be good faith, reasoned analysis in response." (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners of the City of Oakland* (2001) 91 Cal.App.4th 1344, 1367, quoting *Cleary v. County of Stanislaus*, *supra*, 118 Cal.App.3d 348.)

i. Impact of NO_x Emissions and PM_{10} Particulate

Appellants first focus on the Air District's comments on NO_x emissions. The Project would affect both regional and localized pollutants. The regional pollutant is ozone, which is established in the atmosphere by the interaction between NO_x and VOC emissions. High ozone levels adversely affect human health and the environment. The Project would produce 546 pounds per day of NO_x emissions. Since the threshold of significance under CEQA is 137 pounds per day, the Project would result in NO_x levels that are nearly four times the acceptable amount, and thereby would cause a violation of the ozone standard or contribute to a violation. It is apparent that the County accepted that the Project would result in serious deterioration of air quality in the Salinas Valley and the North Central Coast Basin. Since the project level impact was significant, the Air District identified a possible mitigation, that is, financial contribution to the Carl Moyer Program for retrofitting other pollution sources in the region. The cumulative impact of the Project was also significant, because the NO_x emissions had not been accommodated in the regional Air Quality Management Plan (AQM Plan) for the Monterey Bay Region. This plan would be amended in 2004 to accommodate the emissions from the Project at the cumulative level, but not the project level.

The Air District submitted its comments regarding the air quality analysis in the administrative draft EIR, the project EIR, and the DEIR. The DEIR adopted the Air District's thresholds of significance, that is, 137 pounds per day for NO_x,

and concluded that the Project would exceed the significance threshold by 409 pounds.

The FEIR responded in detail to the Air District's comments. It concluded that the NO_x emissions would have a significant cumulative impact because the Project had not been accommodated in the AQM Plan. After the Air District again explained that the impact should also be analyzed as a direct Project effect, the County's findings certifying the FEIR incorporated this comment. The County also adopted the Air District's position that complete mitigation for the excess NO_x emissions would have required Granite to mitigate based on maximum daily emissions.

The second and localized pollutant is particulate matter, that is, carbon, dust, metals, chemicals, and other matter 10 microns or smaller. This pollutant is called PM_{10} particulate, which is inhalable into the lungs. The Air District questioned the EIR's methodology for assessing this impact in its letters of June 12, 2003, July 15, 2003, and August 1, 2003. The EIR consultant adopted some of the Air District's suggestions, but the Air District had not yet reviewed the results in November 2003.

To support its position that the County did not consider the Air District's comments, appellants point to the hearing before the Planning Commission on November 12, 2003. Appellants claim that Granite presented its position as if it were the position of the EIR consultant and the County when the EIR consultant was unable to explain his position. This mischaracterizes the record. One of the commissioners at the Planning Commission hearing asked Granite to present its position, which it did.

Appellants next focus on correspondence between Janet Brennan, a supervising planner for the Air District and Mike Novo, a planner for the County. Following the Planning Commission hearing, Brennan and Novo exchanged

emails. Brennan congratulated Novo on the "fine job of steering the project through the process" and indicated that she was "very pleased" with modifications that had been made. She also stated that Granite's influence on the EIR consultant had been a problem, noting that Granite's testimony at the hearing was "too similar to what was in the EIR to be a coincidence." Novo responded: "It may seem that way, but I have to tell you . . . [the EIR consultant] had big battles with Granite over the air quality stuff. I attended some of those meetings. There was some agreement with Granite on some of what they said, but the EIR was delayed for about a year primarily to resolve the air quality issues. Granite was not at all pleased with our consultant's stance on air quality issues, and I got lots of phone calls from them complaining about our consultant's stance." Based on our review of the record, we reject appellants' claim that the County disregarded the Air District's comments on the Project.

ii. Air Quality Impacts on the Pinnacles National Monument

Appellants next argue that the County failed to consider the Air District's comment that ozone violations could occur at the Pinnacles National Monument (Pinnacles).

The Pinnacles is located about 15 miles from the Project site. The DEIR analyzed the Project's potential air quality impacts on this area through the use of modeling. It found that the Project would not exceed the National Ambient Air Quality Standards under the Prevention of Significant Deterioration (PSD) program (42 U.S.C. § 7470 et seq.) or the state ambient air quality standards (Cal. Code Regs., tit. 17, § 70200). In October 2003, the FEIR acknowledged the Air District's comment on the DEIR that "none of the criteria pollutants trigger annual PSD thresholds."

However, after conducting further analysis, the Air District sent comments on the FEIR, and noted that the ozone levels at the Pinnacles could exceed state

and federal standards during the ozone season if the Project were approved.[5] The April letter stated: "[M]odeling results included in the DEIR show that the project could contribute a maximum 1-hour ozone concentration at the Pinnacles of 0.005 ppm. Exceedances of the State standard occur when hourly readings reach 0.095 ppm and higher, and during the ozone season, readings at the Pinnacles frequently range between 0.090 and 0.094 ppm. An additional 0.005 from the proposed project could lead to additional exceedances of both the State standard and the new federal ozone standard, thus impeding attainment or maintenance of these standards and potentially increasing regulations on other stationary sources within the Air Basin." Thus, there was a possibility that the Project might contribute to a regional ozone exceedance on certain days. While the Board found that the environmental impacts on the Pinnacles would not be significant, it also found that "the Project could still potentially contribute to an exceedance of ozone standards . . . ." The Board then concluded that this potential impact remained significant and unavoidable after adoption of all feasible mitigation and alternatives. Given that it was speculative as to whether there would be an exceedance of ozone standards at the Pinnacles, the Air District's concern was sufficiently addressed by the Board in its analysis and findings.

b. Diesel Risk Assessment

An EIR must discuss, among other things, "health and safety problems caused by the physical changes" that the proposed project will create. (Guidelines, § 15126.2.)

The DEIR identified haul roads as an indirect source of air pollutants. It specifically addressed diesel particulate matter generated by the Project. The toxicity modeling occurred at six receptor sites located near the Project where

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[5] The ozone season occurs from May through October.

emission impacts would be the greatest for both haul trucks and on-site equipment and vehicles. Even at these sites, the results of the modeling established that the impact on health from diesel particulate was less than significant. The Air District verified this result.

Appellants argue that the EIR failed to include a diesel risk assessment for residences close to the proposed truck haul route. At least some of these residences are inhabited by the elderly and children.[6] Appellants question whether the Board would have approved the Project "even with the information that its design and operation may endanger human health along the truck haul routes[.]" However, the EIR analyzed the impacts of diesel particulate emissions where the impact would be greatest. Appellants have made no showing nor is there any indication in the record that a study that focused solely on certain residents on the truck haul routes would have produced a different conclusion than that reached by the Air District or the County.

Appellants' reliance on *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184 is misplaced. In that case, the EIR did not discuss whether air pollution generated by the project would have adverse health effects. (*Id.* at pp. 1219-1220.) Here the results of the diesel risk assessment at the six receptor sites where emission impacts would be greatest established that the impact on health was less than significant.

c. Determination of Infeasibility

Appellants contend that the County failed to adopt feasible measures to mitigate excess NO_x emissions generated by the Project. They claim that there was insufficient evidence to support the County's infeasibility finding.

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[6] The comments to the DEIR indicated that there were two elderly individuals in separate residences and an undisclosed number of children in another residence on the truck haul route.

One of the basic purposes of CEQA is to "[i]dentify ways that environmental damage can be avoided or significantly reduced." (Guidelines, § 15002, subd. (a)(2).) Thus, "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects . . . ." (Pub. Resources Code, § 21002.) However, the public agency may also find that "[s]pecific economic, legal, social, technological, or other considerations, . . . make infeasible the mitigation measures or alternatives identified in the environmental impact report" and the "benefits of the project outweigh the significant effects on the environment." (Guidelines, § 21081.)

Since the Project's cumulative impacts on air quality were significant and reasonably likely to lead to a permanent degradation in air quality, the County was required to consider feasible alternatives or mitigation measures. Thus, the DEIR recommended several measures to mitigate the Project's air quality impacts. The County adopted several of these mitigation measures as a condition of the permit. At issue, however, was Mitigation Measure 3.4-2h, which required Granite to contribute funding, on a pound-for-pound basis, to the Air District's Carl Moyer Program. This program provides funding for companies to install new, cleaner engines or to retrofit control devices. The duration of this mitigation measure was 15 years, which corresponds to two cycles of the Carl Moyer Program. The DEIR concluded that even with this mitigation measure, the Project could result in significant and unavoidable air quality impacts.

After the Planning Commission had certified the EIR and approved the Project, the Air District objected to the analysis of air quality impacts and suggested that the issue be addressed at the end of the 15-year period. Before the Granite application was heard on appeal by the Board, the Air District and County staff recommended a revised mitigation measure. The revised Mitigation Measure

3.4-2h required mitigation based on maximum daily emissions and assumed that maximum peak emissions would be reached on 250 days per year rather than an annual average of actual emissions. According to Air District calculations, Granite would be required to pay a one-time up front fee of $988,474. On March 9, 2004, the County staff proposed this mitigation measure to the Board.

Granite objected to the proposed mitigation measure. Granite argued that the measure was not proportional to the Project's impacts, because Granite could only operate at peak production 81 days per year based on the permit's limitation on total production. Granite also asserted that "similar and recently permitted operations" were not required to comply with the same level of mitigation, and thus it was not economically feasible. Granite submitted documentation, including studies of the Union Asphalt Bradley Mine and Hidden Canyon Quarry, to support this assertion.

After the Air District submitted additional information, the County agreed with the Air District that mitigation based on maximum daily emissions would be required to fully mitigate the air quality impacts. However, the County did not adopt the full mitigation measure. The County found that since "full mitigation for peak day emissions is not feasible, it is possible that this impact would not be fully mitigated to a less than significant level." The County explained its finding: "After the comment period on the Draft EIR had closed, the MBUAPCD worked with the County to modify Mitigation Measure 3.4-2h. The modifications were incorporated into the March 9, 2004 Board of Supervisors staff report. Upon further discussions with the Air District and the EIR consultant, the County is recommending that the changes to Mitigation Measure 3.4-2h are infeasible, improperly defer the County's duty to impose enforceable mitigation measures at the time of project approval, and treats this project in a manner that has not been required by the County of other similarly situated mining applicants, causing a

competitive economic disadvantage [*sic*] to other local mining operations. [¶] The availability of Carl Moyer program projects or other feasible projects to reduce NO_x [is] limited. Mitigation appears feasible, calculated on an annual average basis, for the 15-year period described in the Mitigation Measure. The County can forecast the availability of a known, enforceable program for that period of time. Feasible mitigation measures beyond the 15-year time frame cannot be identified. The number of applicants for the Carl Moyer program is somewhat limited, especially considering that other funding sources will also purchase engine replacements under the program. It is speculative as to whether any other feasible programs or sources will be available beyond the 15-year anticipated availability of the Carl Moyer list of applicants. If there are any future programs, there is no data on the cost of offsetting NO_x emissions so that economic feasibility could be assessed by the County or applicant. The County finds that there is a lack of certainty regarding available mitigation beyond 15 years. Postponing the analysis to a later date would improperly defer the impact analysis and would not allow the County to determine if the mitigation is feasible. The County finds that the only feasible mitigation measure is that set forth in the Final EIR (Mitigation Measure 3.4-2h)."

We first note that it is the policy of this state to "[t]ake all action necessary to provide the people of this state with clean air . . . ." (Pub. Resources Code, § 21001, subd. (b).) Here the quantity of pollutants that will be released onto this beautiful landscape is considerable. Thus, we have serious concerns about the wisdom of approving a project that will have such a negative impact on air quality. However, as explained by the California Supreme Court in *Laurel Heights Improvement Assn. v. Regents of University of California*, *supra*, 47 Cal.3d 376, our standard of review in these circumstances is limited. "A court may not set aside an agency's approval of an EIR on the ground that an opposite conclusion

would have been equally or more reasonable. A court's task is not to weigh conflicting evidence and determine who has the better argument when the dispute is whether adverse effects have been mitigated or could be better mitigated. We have neither the resources nor scientific expertise to engage in such analysis, even if the statutory prescribed standard of review permitted us to do so. Our limited function is consistent with the principle that the purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations." (*Id.* at p. 393, internal citations and quotation marks omitted.)

Here the record establishes that other quarry operations had not been subjected to the same level of mitigation, thus giving these operations a competitive advantage. More importantly, while the Carl Moyer Program does not have a termination date, it is unknown what type of projects would be available through this program beyond the 15-year period. Since there was a lack of data and certainty regarding the future cost of offsetting emissions, it was infeasible to require Granite to make payments to offset pollutants indefinitely. Thus, there was sufficient evidence to support the County's finding.[7]

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[7] There is no merit to appellant's claim that mitigation measures regarding air quality end after 15 years. The County approved Condition Number 79, which requires that "[a]t least six months prior to every 10 year review, the Operator shall provide sufficient funding to the County to verify that engine recipients, for engines replaced pursuant to this mitigation measure, have retained the engine or replaced it with equal or cleaner technology." Condition Number 94 authorizes the County, as part of the periodic 10-year review, to modify or add new conditions necessary to attain the level of mitigation upon which the entitlement was based.

4. Water Use

Appellants argue that since the EIR used a water use summary submitted by Granite without obtaining or analyzing the underlying calculations and assumptions, the Project's actual water use was unknown. They also point out that these estimates did not include water use that would be required by mitigation measures.

"If an EIR fails to include relevant information and precludes informed decisonmaking and public participation, the goals of CEQA are thwarted and a prejudicial abuse of discretion has occurred. Our role here, as a reviewing court, is not to decide whether the board acted wisely or unwisely, but simply to determine whether the EIR contained sufficient information about a proposed project, the site and surrounding area and the projected environmental impacts arising as a result of the proposed project or activity to allow for an informed decision." (*Save Our Peninsula*, *supra*, 87 Cal.App.4th at p. 128, internal citations and quotation marks omitted.) Where relevant information is omitted from an EIR, the error is prejudicial. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.)

The DEIR stated that the Project would require water for aggregate washing, tire washing, dust control, spraying quarry haul roads and stockpile area roads, employee facilities, concrete production, and concrete washout. The DEIR concluded that "[a]fter recycling and re-use, the average consumptive use is estimated at 239 acre-feet per year and the maximum consumptive use would be estimated at 310 acre-feet per year." Table 3.8-3 showed "average water consumption," and Table 3.8-4 showed the "high estimate" for the aggregate plant, the roads, the employee facilities, and the concrete plant. The estimates were based on the hydrology analysis conducted by Weber, Hayes & Associates and the Operations Plan prepared by Granite. The DEIR tables were identical to those

included in the reports that were prepared in 2001. There were no estimates for water consumption for the asphaltic concrete plant and the recycling plant.

In 2003, the DEIR proposed mitigation measures that required water consumption for the Project. Those mitigation measures included: twice daily watering of all disturbed areas (Condition 45-4); wetting of the entire truck route (Conditions 45-1, 45-2); wetting of open bed trucks (Condition 45-6); revegetation of the many acres of disturbed areas (Condition 71); revegetation of 75 acres of waste stockpiles (Condition 72); and the on-site plant nursery. The County also imposed Conditions 67 and 99 to limit water use to 310 acre feet per year.

Granite does not rebut appellants' argument that the mitigation measures and the asphaltic concrete and recycling plants would require additional water that was not quantified in the EIR. The County, however, claims that the EIR included estimated water use for some of the mitigations, such as dust control, quarry haul roads, and stockpile area roads. Even assuming that Granite's figures anticipated water estimates that included these mitigation measures, there were no estimates in the EIR for flushing the off-site truck route, water for the on-site plant nursery, and water for revegetation. Nor were there estimates for water used in the operation, dust suppression and tire washing for the asphaltic concrete plant and the recycling plant. Since the EIR failed to include relevant information on the Project's water use, we must reverse.[8]

5. Alternatives

Appellants contend that the EIR discussion of alternatives was flawed, because it examined alternatives to a project with only 75 acres of waste.

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[8] Since we conclude that the EIR fails to include sufficient information on water use, we do not consider appellants' remaining contentions regarding the Project's impact on the overdrafted water supply or the adequacy of the mitigation measure involving the Salinas Valley Water Project.

An agency is required to consider a range of alternatives to the proposed project that "(1) offer substantial environmental advantages over the project proposal; and (2) may be feasibly accomplished in a successful manner considering the economic, environmental, social and technological factors involved." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566, internal citations and quotation marks omitted.) Here, as previously discussed, there was sufficient evidence to support the EIR's estimation of the amount of waste associated with the Project. Thus, the FEIR adequately discussed alternatives to the Project.

6. Traffic

Appellants claim that "[t]he traffic is unlimited as to hours and days; the baseline is the highest possible; and the only 'enforcement' is for Granite to count some of the trucks that will use the roads." They also claim that the conditions imposed by the County "provide no actual restrictions, and the traffic impacts for the next 120 years are minimized artificially and in violation of CEQA's informational requirements." There is no merit to these claims.

The DEIR set forth the operating schedule for the Project. Typical quarrying hours would be Monday through Friday from 6:00 a.m. to 8:00 p.m. Typical processing and hauling of material from the rock processing, asphaltic concrete, Portland cement concrete, and recycling plants would occur Monday through Friday from 5:00 a.m. to 5:00 p.m. These operations would normally occur five days per week. However, operations could be extended "sporadically" to meet customer demand. Certain operations would require work at night to minimize traffic impacts on commuters, and thus would occur outside these hours.

The traffic analysis for the Project was also included in the DEIR (§ 3.11), Operations Plan (§ 1.2.6), and traffic studies. An independent traffic engineer peer reviewed the traffic analysis. The DEIR estimated that the Project would generate

1,093 truck trips per day under typical production and recycling levels. Project employees would generate an additional 120 trips per day. The Project might generate 2,122 truck trips per day at maximum production and recycling levels. However, the quarry would only be able to operate at maximum production approximately 80 days each year due to the annual production limit of 1,500,000 tons.

The DEIR included mitigation measures "to prevent road and intersection levels of service from deteriorating below established thresholds under cumulative conditions." Mitigation Measure 3.11-4a required Granite to limit the total number of daily truck trips to 2,065. It also required Granite to "notify the Monterey County Public Works Department when truck trips reach 75 percent (1548 trips) of the permitted daily level. Upon notification of the Project approaching peak daily trips, the Public Works Director may require intersection LOS [level of service] monitoring to ensure that the minimum standard of LOS C is maintained. If intersection LOS is shown to be worse that LOS C, the Operator may be required to contribute a fair share towards additional intersection improvements, or reduce maximum daily trips, as needed, to maintain the minimum LOS standard." The County adopted this limitation on the number of truck trips in its conditions of approval for the Project. Thus, there were restrictions on the number of truck trips per day, and the conditions of approval did not allow Granite to generate "'maximum traffic' every day for 113 years."

B. Zoning and Land Use

Appellants contend that the rock processing plant, asphaltic concrete batch plant, Portland cement concrete batch plant, and recycling facilities are not permitted uses under the County's zoning ordinance.

1. Standard of Review

This court's review of the County's interpretation of its own ordinance is limited. "We interpret ordinances by the same rules applicable to statutes." (*Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd.* (1999) 70 Cal.App.4th 281, 290.) In determining the intent of the legislative body, we begin with the language of the statute itself. (*Rojo v. Kliger* (1990) 52 Cal.3d 65, 73.) We examine the words used, giving them their usual and ordinary meaning. (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 90.) "If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs." (*Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036, 1047, quoting *People v. Snook* (1997) 16 Cal.4th 1210, 1215.)

However, when the statutory language is ambiguous, "we must determine whether the [legislative body's] interpretation of the term was arbitrary, capricious or entirely lacking in evidentiary support." (*No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 244.) Courts defer to the legislative body's interpretation, because this body "has unique competence" to interpret an ordinance in its adjudicatory capacity. (See *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (1992) 102 Cal.App.4th 656, 677-678.) We may find the County's interpretation is arbitrary, capricious or entirely lacking in evidentiary support only if it "is based on evidence from which no reasonable person could have reached the same conclusion." (*A Local & Regional Monitor v. City of Los Angeles* (1993) 16 Cal.App.4th 630, 648.)

2. Zoning Ordinance

"The zoning districts list the uses which are allowed or may be allowed subject to discretionary permit processes. . . . Other uses are prohibited."

(Monterey Code, § 21.02.040.)[9] The Project site is within the Farmlands (F) and Permanent Grazing (PG) zoning districts. Mineral extraction is permitted in F, PG, and Heavy Industrial (HI) zoning districts. (Monterey Code, §§ 21.30.050, subd. (L), 21.34.050, subd. (Y), 21.28.060, subd. (O).) The F and PG zoning districts permit agricultural processing plants,[10] agricultural support facilities, and "[o]ther uses of a similar character, density and intensity to those uses listed in this Section." (§§ 21.30.050, subds. (I), (N), and (W), 21.34.050, subds. (N), (R), and (X).) The HI zoning district also permits agricultural processing plants and "[o]ther uses of a similar character, density and intensity to those uses listed in this Section." (§ 21.28.060, subds. (O) and (EE).) None of the zoning districts expressly identify a rock processing plant, an asphaltic concrete batch plant, a Portland cement concrete batch plant, or an asphalt and concrete recycling facility as an allowed use. Since the language in the ordinance is ambiguous as to whether the facilities included in the Project are permitted in the F and PG zoning districts, we turn first to the County's interpretation of its own ordinance.

The DEIR discussed the Project's compatibility with existing land uses. "The image that many people have of farming is that of a bucolic, pastoral setting. Actually, modern agricultural operations often have more in common with industrial land uses. Heavy equipment operation, evening operations, groundwater contamination and aerial spraying of pesticides are common. . . . The Project

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[9] All further statutory references are to the Monterey Code.

[10] An agricultural processing plant is defined as "a structure, building, facility, area, open or enclosed, or any other location for the refinement, treatment, or conversion of agricultural products where a physical, chemical or similar change of an agricultural product occurs. Examples of agricultural processing include but are not limited to, coolers, dehydrators, cold storage houses, hulling operations, and the sorting, cleaning, packing, and storing of agricultural products preparatory to sale or shipment in their natural form including all customarily incidental uses. Agricultural processing plants include wineries." (§ 21.06.020.)

would not preclude or restrict existing agricultural uses or result in the permanent conversion of important farmlands to nonagricultural uses."

At the hearing before the Planning Commission, Novo explained the County's interpretation of the zoning ordinance: "The project is consistent with plan policies and zoning. Some of the public has questioned whether the asphalt and batch plants can be allowed in the Farmlands and Permanent Grazing zoning districts. . . . These zoning districts also allow (and that's the F and PG zoning districts) . . . other uses of a similar character, density and intensity to those uses listed. . . . The County Planning Commission has determined on a number of occasions that these processing uses are either an appurtenant use in the F and PG district, or are of similar character, density and intensity of removal of materials or an agricultural processing plant or other listed conditional uses." Novo then provided five examples in which the County had approved mining operations with batch and asphalt plants in F and PG zoning districts.

On May 20, 2004, the County found that the processing activities associated with the Project were consistent with the zoning ordinance. It stated: "The project for a mining operation and proposed appurtenant uses are uses allowed subject to obtaining a Use Permit, in accordance with Sections 21.30.050.L and 21.34.050.Y. These sections allow the 'Removal of Minerals or Natural Materials for Commercial Purposes.' Sections 21.30.050.W and 21.34.050.X allow 'Other uses of a similar character, density and intensity to those uses listed in this Section.' The Planning Commission has determined, in the past and under the current zoning ordinance, and found in this case, that crusher, processing plant, asphalt plant, and concrete plant uses are appurtenant to the primary use. The Planning Commission also found that the appurtenant uses are of a similar character, density and intensity to other uses listed in the Section, such as agricultural processing plants. The accessory processing uses approved under

this permit are substantially similar to the accessory uses approved with other mining operations."

We do not find that the County's interpretation is arbitrary, capricious or entirely lacking in evidentiary support. The removal of minerals or other natural materials is allowed in F and PG zoning districts with a use permit. (§§ 21.30.050, subd. (L), 21.34.050, subd. (Y).) Agricultural processing plants as well as "[o]ther uses of a similar character, density and intensity" are also permissible uses in these zoning districts. (§§ 21.30.050, subds. (N), (W), 21.34.050, subds. (R), (X).) Since a rock processing plant, an asphaltic concrete batch plant, a Portland cement concrete batch plant, or an asphalt and concrete recycling facility could be considered uses of a similar character, density and intensity as an agricultural processing plant, the County has consistently interpreted these uses as permitted in F and PG zoning districts. Thus, we reject appellants' contention that the Project does not comply with the zoning ordinance.

Appellants also contend that the EIR failed to adequately discuss whether the Project complied with the zoning ordinance, because "[a]ny mention of the project's four heavy industrial plants is glaringly absent from the EIR's discussion of 'Allowed Uses.'" We disagree.

The DEIR provided a detailed description of the Project, including the rock processing, asphaltic concrete, Portland cement concrete, and recycling plants. Both the DEIR and the FEIR discussed the issue of whether mineral processing plants were allowed uses. The DEIR referred to the allowed uses in F and PG zoning districts, stating: "In implementing these guiding purposes, . . . nonagricultural uses are allowed, including: mining and mineral processing, oil and gas exploration, churches, parks, schools, and limited types and numbers of residential units. Although the primary purpose of this zoning district is to preserve and enhance important agricultural lands, it is also understood that there

may be nonagricultural uses that are compatible with existing agricultural activities and that benefit the local community." The FEIR discussed the County's prior interpretation of this issue. It stated: "[I]n addition to mineral extraction for commercial purposes, a wide variety of intensive uses are allowed including, but not limited to: . . . agricultural processing plants. In recognizing that the Zoning Ordinance cannot list every conceivable use that might be appropriate, Sections 21.30.050(W) and 21.34.050(X) allow 'other uses of a similar character, density and intensity to those listed in this section.' Review of County files shows that nearly all mineral extraction sites in Monterey County have been located in rural agricultural areas. Also, mineral processing facilities have consistently been interpreted as an integral component of commercial mineral extraction activities. . . . This makes sense; the alternative would typically be to place the facility away from the product source needed to run the operations, which increases trips and potential air quality impacts." Thus, there is no merit to appellants' contention.

IV. Disposition

The judgment is reversed. Costs are awarded to appellants.

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Mihara, J.

WE CONCUR:

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Rushing, P.J.

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Elia, J.